

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION

FIREARMS REGULATORY  
ACCOUNTABILITY COALITION, INC., *et*  
*al.*,

*Plaintiffs,*

v.

MERRICK B. GARLAND, *et al.*,

*Defendants.*

No. 1:23-cv-24-DLH-CRH

**DEFENDANTS' RESPONSE TO PLAINTIFFS'**  
**NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants hereby respond to Plaintiffs' Notice of Supplemental Authority. ECF No. 87. As that notice informed the Court, a divided panel of the Fifth Circuit recently extended the injunction pending appeal in *Mock v. Garland*, No. 23-10319 (5th Cir. May 5, 2023), with Judge Higginson dissenting. Specifically, the court found that plaintiffs there were likely to succeed on their claim that the Final Rule was not a "logical outgrowth" of the Proposed Rule. But the majority opinion "decline[d] to address" plaintiffs' other statutory and constitutional arguments. *See* ECF No. 87-1 at 22-23. The Complaint in this matter does not raise a "logical outgrowth" claim at all, *see* Compl. at 37-40, and Plaintiffs do not attempt to show otherwise. Instead, Plaintiffs point to statements of the panel majority and concurrence that are largely dicta, ECF No. 87 at 2-3, and in any event, are refuted by the persuasive reasoning of Judge Higginson's dissenting opinion. *See* ECF No. 87-1 at 43-58. Finally, the panel majority in *Mock* did not decide whether plaintiffs there had shown irreparable harm, and thus whether a preliminary injunction was appropriate, instead remanding the issue to the district court to decide. *Id.* at 40. For all these reasons, the panel majority in *Mock* is neither binding nor persuasive

case law, and this Court should deny Plaintiffs' motion for a preliminary injunction. Defendants are also amenable to providing further briefing as to the *Mock* decision, if helpful to the Court.

Dated: August 4, 2023

Respectfully submitted,

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BRIGHAM J. BOWEN  
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/s/ Taylor Pitz  
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**CERTIFICATE OF SERVICE**

On August 4, 2023, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, District of North Dakota, using the Court's electronic case filing system. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Taylor Pittz  
TAYLOR PITZ  
Trial Attorney  
U.S. Department of Justice